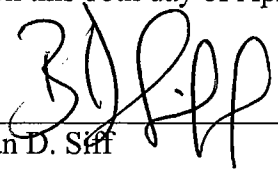




3. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York, on this 18th day of April, 2008.

  
\_\_\_\_\_  
Brian D. Siff

# EXHIBIT A

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 ARQUEST, INC.,

4 Plaintiff, New York, N.Y.

5 v. 07 Civ. 11202 (CM)

6 KIMBERLY-CLARK WORLDWIDE,  
6 INC.,

7 Defendant.

8 -----x

9 April 4, 2008  
10 11:55 a.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 District Judge

14 APPEARANCES

15 DICKSTEIN SHAPIRO LLP  
16 Attorneys for Plaintiff  
17 BY: BRIAN D. SIFF  
18 RICHARD LaCAVA  
19 PETER LAMBRIANAKOS

20 BANNER & WITCOFF, LTD  
21 Attorneys for Defendant  
22 BY: MARC S. COOPERMAN  
23 JANICE V. MITRIUS

24 VENABLE LLP  
25 Attorneys for Defendant  
26 BY: MATTHEW T. McLAUGHLIN

1 and we need to get such matters cleared up before we can act on  
2 that motion.

3 But I was particularly disturbed this week to receive  
4 copies of briefs that had been filed in front of one of my  
5 comrades down in Texas where someone, who never spoke to me,  
6 opined that I was going to transfer this case to Texas.

7 If I have personal jurisdiction, I'm not transferring  
8 this case to Texas. All right? Let me make that very clear  
9 from the get-go, from the outset. I love patent cases. I  
10 enjoy patent cases. I have fun with patent cases. And I am  
11 happy to keep patent cases. I am not allergic to patent cases.  
12 I'm getting a patent case decision out today.

13 So we need to resolve the issue of personal  
14 jurisdiction if in fact it is still on the table.

15 Is it still on the table?

16 MR. COOPERMAN: It is, your Honor.

17 THE COURT: Then, Mr. McLaughlin, you have a lot of  
18 questions to answer.

19 MR. McLAUGHLIN: Your Honor, I'm sorry. I'm  
20 Mr. McLaughlin. I'm local counsel.

21 THE COURT: I'm so sorry.

22 MR. COOPERMAN: I had moved for Mr. Cooperman's pro  
23 hac admission, your Honor, and it has been granted. May he  
24 address the Court directly?

25 THE COURT: He absolutely can.

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1 THE COURT: OK. Appearances, please.

2 MR. SIFF: Brian Siff, from Dickstein Shapiro,  
3 representing the plaintiff, Arquest, Inc., your Honor.

4 MR. LaCAVA: Richard LaCava, from Dickstein Shapiro,  
5 representing the plaintiff, Arquest, Inc.

6 MR. LAMBRIANAKOS: Peter Lambrianakos, also from  
7 Dickstein Shapiro, on behalf of Arquest.

8 MR. McLAUGHLIN: Good morning, your Honor. Matthew  
9 McLaughlin, from Venable, for Kimberly-Clark Worldwide.

10 MR. COOPERMAN: Good morning, your Honor. Marc  
11 Cooperman, from Banner & Witcoff, for Kimberly-Clark Worldwide.

12 MS. MITRIUS: Janice Mitrius, from Banner & Witcoff,  
13 on behalf of Kimberly-Clark Worldwide, your Honor.

14 THE COURT: OK. Everybody, have a seat.

15 This case was originally on for an initial conference,  
16 and it is my habit to dispose of motions to dismiss or transfer  
17 at initial conferences, and I had such a motion and it was  
18 fully briefed and we have been going through the papers. And  
19 as you know, because I sent you out a little note, there is an  
20 awful lot missing from the movant's papers relating to the  
21 motion to dismiss for lack of personal jurisdiction.

22 I confess, as an old user of many Kimberly-Clark  
23 products for I think the entirety of my life, I was surprised  
24 to get the motion. The moving affidavits are a lot more  
25 interesting for what they don't say than for what they do say.

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1 MR. COOPERMAN: Thank you, your Honor.

2 First, I want to apologize on behalf of Kimberly-Clark  
3 Worldwide and Kimberly-Clark Global sales. It was presumptuous  
4 of us to tell the district court in Texas how we thought you  
5 would rule.

6 At the time we filed our opposition in Texas, we  
7 thought we were being balanced. We didn't ask the Texas court  
8 to rule on the motion to dismiss and get the case going. We  
9 said, no, this is an issue for the judge in New York and you  
10 should wait for the judge in New York to rule. Her ruling will  
11 control. So we felt that we were getting downtown. But in  
12 retrospect, we should have --

13 THE COURT: Look, guys, enough of these reasons, let's  
14 move on to the merits.

15 MR. COOPERMAN: Your Honor, we have brought up an  
16 officer from Kimberly-Clark Worldwide, whose name is John  
17 Wesley -- he is assistant secretary of Kimberly-Clark  
18 Worldwide -- to address those questions that you have raised in  
19 your note that you sent to us. So he is here prepared today to  
20 testify however you want.

21 THE COURT: Great.

22 MR. COOPERMAN: In addition, we have Vicki Margolis.  
23 You may know her name. She is one of our declarants. She is  
24 in-house counsel, in-house patent litigation counsel for  
25 Kimberly-Clark. She joined us from Neenah, and Mr. Wesley has

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1 flown up from Dallas to be here today.  
2 We also have, if necessary, Mr. Misun, whose  
3 declaration you mention in your note. He is not here today  
4 because you said you didn't want him here  
5 THE COURT: Correct.  
6 MR. COOPERMAN: But he is available by phone if we  
7 need to ask him any questions, as well.  
8 THE COURT: OK. Fine.  
9 Well, let's hear from someone. You know what I'm  
10 interested in.  
11 That moving affidavit has an awful lot of holes in it,  
12 and if you want to convince me that I lack personal  
13 jurisdiction over the holder of the patents for the diaper that  
14 is in danger of becoming oblivious, its trademark, because  
15 everybody calls all disposable diapers Huggies, then you've got  
16 a lot of questions to answer.  
17 MR. COOPERMAN: I understand, I think, where your  
18 Honor's concerns are at.  
19 We are dealing with two entities here --  
20 Kimberly-Clark Worldwide, who is the named defendant, who is  
21 the owner of the intellectual property, and Kimberly-Clark  
22 Global Sales. Mr. Misun's declaration, which your Honor has  
23 pointed out was deficient, only goes to half of the story,  
24 absolutely focuses on Kimberly-Clark Worldwide. We viewed that  
25 as the central issue.

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1 In our reply brief --  
2 THE COURT: No, it left a whole lot of issues open  
3 about Kimberly-Clark Worldwide. Kimberly-Clark Worldwide owns  
4 these patents. The patents, unless we are going to use them to  
5 paper the executive washroom, the patents are of no value to  
6 Kimberly-Clark Worldwide unless they are being exploited. I  
7 would be shocked to learn that it was not the business of  
8 Kimberly-Clark Worldwide to get those patents out there.  
9 And according to your papers, this is not just a  
10 holding company for intellectual property, this is a company  
11 that manufactures something. And if I were a betting person, I  
12 would be betting that they manufacture diapers and that they  
13 manufacture diapers that incorporate the patented features and  
14 use the patented process that are in your patent.  
15 Am I right so far?  
16 MR. COOPERMAN: You are correct, your Honor.  
17 THE COURT: Well, isn't that amazing.  
18 Now, so the exploitation of the patents is obviously  
19 done by getting those diapers out there in the marketplace, and  
20 we all know that diapers, Huggies, are sold everywhere in the  
21 known universe because it is the goal of Kimberly-Clark, the  
22 conglomerate, to get every little baby's bottom covered in a  
23 Huggie, as opposed to any other kind of diaper, right?  
24 MR. COOPERMAN: As an enterprise, I would agree with  
25 that. Of course, there are different entities and that's

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1 part --  
2 THE COURT: Sure there are different entities  
3 involved, but if Kimberly-Clark Worldwide, which owns the  
4 patent, manufacturers the diapers that get sold in the State of  
5 New York, as part of its business activity manufactures those  
6 diapers, I just don't see how you can say it's not doing  
7 business in New York, if only through the good offices of its  
8 sister corporation -- am I correct? Sister corporation?  
9 MR. COOPERMAN: Kimberly-Clark Global Sales a sister  
10 corporation, that is correct.  
11 THE COURT: Right. If only for the good offices of  
12 its sister corporation, which I'll bet owns, in a technical  
13 sense, the cotton and the plastic and the stuff that's used to  
14 manufacture the diapers, and then sells the diapers, right?  
15 MR. COOPERMAN: It does that and it also does more,  
16 your Honor.  
17 THE COURT: Oh, good. OK.  
18 Well, I'm happy to hear anything that you all want to  
19 tell me about this. But those facts are relevant facts and  
20 they are conspicuously absent from your moving papers, which is  
21 why I said that the moving papers appeared as they were trying  
22 to be deliberately obfuscatory. I think I was right about  
23 that.  
24 MR. COOPERMAN: I disagree, your Honor, that we were  
25 trying to be deliberately obfuscatory --

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1 THE COURT: Then you were accidentally obfuscatory.  
2 MR. COOPERMAN: We thought we were addressing the  
3 central issue, and we will certainly address Kimberly-Clark  
4 Global Sales and the relationship with Worldwide in our reply  
5 brief.  
6 THE COURT: Let's hear from the folks that you've  
7 brought up here, OK?  
8 MR. COOPERMAN: Certainly. Would you like us to put  
9 them on the stand?  
10 THE COURT: That would be just great.  
11 What is your name, sir  
12 THE WITNESS: John Wesley.  
13 THE COURT: Mr. Wesley, good morning or good  
14 afternoon. Won't you take a seat.  
15 JOHN W. WESLEY,  
16 called as a witness by the defendant,  
17 having been duly sworn, testified as follows:  
18 THE CLERK: Please state and spell your name for the  
19 record.  
20 THE WITNESS: My name is John Wesley, J-O-H-N  
21 W-E-S-L-E-Y.  
22 THE CLERK: Thank you.  
23 DIRECT EXAMINATION  
24 BY MR. COOPERMAN:  
25 Q. Mr. Wesley, would you please tell the Court what your

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1 position is and why we brought you as a representative of  
2 Kimberly-Clark Worldwide?  
3 A. Yes. I am an officer of both Kimberly-Clark Worldwide and  
4 Kimberly-Clark Global Sales. I am the assistant secretary for  
5 both entities.  
6 Q. And have you had any responsibility in restructuring of the  
7 organization?  
8 A. Yes. I'm also the chief counsel of corporate transactions  
9 for Kimberly-Clark Corporation, and in that role I worked on a  
10 project where we restructured our operations in the U.S.,  
11 including the way in which we license our technology and  
12 manufacture products.  
13 Q. Would you tell the Court, please, what products precisely  
14 does Kimberly-Clark Worldwide manufacture?  
15 A. Kimberly-Clark Worldwide has three manufacturing  
16 facilities, all of which are located in the western United  
17 States. There is one in Fullerton, California, a suburb of Los  
18 Angeles, and that facility manufactures tissue products, I  
19 think Kleenex.  
20 THE COURT: Kleenex, my favorite Kimberly-Clark  
21 product.  
22 THE WITNESS: We appreciate that.  
23 THE COURT: Love it. Love it. Couldn't live without  
24 it.  
25 Q. Does that manufacture any diapers or training pants?

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1 A. No, no diapers or training pants at that facility. We call  
2 that a tissue mill.  
3 Q. What other facilities?  
4 A. We have a facility in Everett, Washington and in that  
5 facility they make paper towels and paper napkins, like Scott  
6 towels.  
7 Q. Any other facility?  
8 A. And there is one -- there is a third facility and that  
9 facility is located in Ogden, Utah, a suburb of Salt Lake, near  
10 Salt Lake.  
11 Q. And what is manufactured --  
12 A. That facility is a diaper facility. It manufactures  
13 diapers and training pants.  
14 Q. So there are three facilities and the only one that  
15 manufactures diapers and training pants is Ogden, Utah, is that  
16 correct?  
17 A. That is correct.  
18 Q. Who does K-C Worldwide manufacture for? Who are K-C  
19 Worldwide's customers?  
20 A. K-C Worldwide manufactures all of its products at the  
21 request of Kimberly-Clark Global Sales. There's a supply  
22 agreement pursuant to which Global Sales purchases all of the  
23 raw materials that are used in the manufacturing process,  
24 delivers those to the manufacturer, which was the three  
25 facilities I just described, and then sells those products, the

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1 finished goods inventory. Worldwide sells the finished goods  
2 inventory or delivers it to Global Sales.  
3 Q. Could you briefly walk us through --  
4 THE COURT: Again, I just want to -- Global Sales  
5 purchases the raw materials and delivers them to Worldwide in  
6 Ogden, Utah, which manufactures the diapers and then sells the  
7 diapers back to Global Sales?  
8 THE WITNESS: I misspoke when I said "sells them."  
9 They are owned by Kimberly-Clark Global Sales from the very  
10 beginning.  
11 THE COURT: That's what I wanted to clarify.  
12 THE WITNESS: The way you would think of this  
13 manufacturing process, and it is not unique to Kimberly-Clark,  
14 it is called toll manufacturing. So the entity that is selling  
15 the goods, in this case K-C Global Sales, has contracted with  
16 manufacturers to make products for it, and it has contracted  
17 with K-C Worldwide to make its products, both the tissue and  
18 everything else, as well as the diapers, out of Ogden. And for  
19 that K-C Worldwide is compensated by Kimberly-Clark Global  
20 Sales on a cost-plus basis, which is, again, fairly common for  
21 coat packers or contract manufacturers or other companies that  
22 have toll manufacturing structures.  
23 Q. So can you walk us through how an order would originate  
24 with the customer and how that order would then be passed along  
25 through the Global Sales entities and the Worldwide entities

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1 and ultimately result in products going back to the customer?  
2 A. I think I can.  
3 All sales will originate out of Global Sales. We  
4 would call that the customer-basing part of our business. They  
5 are the ones --  
6 Q. They talk to the customers?  
7 A. Not the customers, they talk to the Wal-Marts, the Safecos,  
8 the Costcos, the Edgars, and others, and Global Sales would  
9 hopefully secure an order from them. And then it would do the  
10 forecasting process or communicate back with the manufacturing  
11 facilities that it has, in effect, retained to manufacture  
12 products for it, and provide them with orders that they need  
13 for delivery. So products then get made and they go off to the  
14 distribution centers and ultimately get shipped to the end  
15 customer.  
16 Q. So the communication that Global Sales has with the  
17 manufacturers, that is sometimes worldwide, is that correct?  
18 A. The manufacturer is sometimes worldwide, that is correct.  
19 Q. Does Global Sales have any products manufactured by anyone  
20 besides Kimberly-Clark Worldwide?  
21 A. It does, it has -- there is approximately 20-plus  
22 additional mill locations in the United States, which are owned  
23 by several different legal entities within the Kimberly-Clark  
24 family of legal entities, and Global Sales has the exact same  
25 arrangement with them as it does with Kimberly-Clark Worldwide.

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1 Q. That is the cost-plus arrangement?  
2 A. The toll manufacturing which is a cost-plus arrangement.  
3 THE COURT: Basically, the way Kimberly-Clark has this  
4 structured it has one sales company; it has a number of  
5 manufacturing facilities, which are under different corporate  
6 umbrellas, all of those being part of the Kimberly-Clark family  
7 of companies.  
8 THE WITNESS: That is correct.  
9 THE COURT: Got it.  
10 By the way, is that toll, T-O-L-L?  
11 THE WITNESS: T-O-L-L, yes, a toll charge.  
12 THE COURT: Got it.  
13 BY MR. COOPERMAN:  
14 Q. Mr. Wesley, this case, as you know, deals with diapers and  
15 training pants. Which manufacturers manufacture those  
16 products? We've already established that Worldwide is one of  
17 them. Are there others?  
18 A. Yes. Again, in the U.S., because we obviously make thee  
19 products around the world, but in the U.S. there are three  
20 manufacturing facilities that make diapers and training pants.  
21 I've already mentioned the Ogden, Utah facility, which is owned  
22 by Kimberly-Clark Worldwide. There are two other facilities.  
23 One is located in Texas, in Paris, Texas, and the other is  
24 located in Beach Island, South Carolina, and both of those  
25 facilities are owned by Kimberly-Clark Corporation.

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1 Q. Sir, do you have a sense as to about what percentage of the  
2 Huggies and training pants, the Pull-Ups, that are manufactured  
3 come from Worldwide as opposed to the Kimberly-Clark  
4 Corporation facilities?  
5 A. Yes, there are three facilities. The production capacity  
6 of each of them is slightly different, but roughly one-third of  
7 our diapers manufactured in the U.S., and training pants as  
8 well, would come from the Ogden, Utah facility, which is the  
9 Kimberly-Clark Worldwide facility.  
10 Q. OK. I want to go back to the chain that we spoke about.  
11 I believe you said that after the products are  
12 manufactured, they go to distribution centers, is that right?  
13 A. Yes, Kimberly-Clark Global Sales owns or operates  
14 distribution facilities. So as product comes off the end of  
15 the production line, it gets boxed up and those boxes will go  
16 to distribution centers. Those centers may be located  
17 physically adjacent to the manufacturing facility and so it  
18 could be owned by the manufacturer, but the operators, the  
19 people that work in those facilities, are Kimberly-Clark Global  
20 Sales employees.  
21 There are also a series of distribution centers that  
22 are not affiliated with the actual facility itself, they will  
23 be stand-alone, strategically located throughout the U.S. to  
24 control cost, the costs of shipping, and those will be either  
25 owned or leased by Kimberly-Clark Global Sales and operated

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1 with Kimberly-Clark Global Sales' employees.  
2 Q. So Global Sales interfaces with the customer, places an  
3 order with Worldwide, Worldwide manufactures for Global Sales,  
4 and then sends it to distribution centers usually for Global  
5 Sales and certainly operated by Global Sales; is that correct?  
6 A. That's correct. The same applies to the other  
7 manufacturing facilities. So if you wanted to get product for  
8 a Kimberly-Clark facility, we do the same thing as you just  
9 described for the Worldwide facility.  
10 Q. So you do that, for example, for the Kimberly-Clark Corp.  
11 facility?  
12 A. Yes.  
13 Q. So why in the world have you set up the company with this  
14 structure, this toll manufacturing structure?  
15 A. Yes. Toll manufacturing structures offer a number of  
16 efficiencies in operations. It allows us both from the actual  
17 physical side of it as well as the recordkeeping of it, as you  
18 could imagine, there is a lot going on and so our information  
19 technology systems, which was a very important part of this  
20 project, how do you pull this altogether, and we gain a lot of  
21 efficiencies and it allows us to see deep into the  
22 organization, to see the orders that you just described, the  
23 inventory levels, and by doing it the way we have done it, we  
24 get better efficiencies. It also allows you to eliminate  
25 duplicate roles for the various manufacturers and sellers so

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1 there are some efficiencies there, and there were obviously  
2 some tax benefits, as well, from this structuring.  
3 Q. Of the three facilities that you described that manufacture  
4 Huggies and manufacture Pull-Ups, you said that one of them is  
5 owned by Worldwide, correct?  
6 A. Correct.  
7 Q. Do any of the products that Worldwide makes, any of those  
8 Huggies or Pull-Ups, make their way to New York?  
9 A. I would have to say I would expect that to be the case.  
10 You know, there is, again, our manufacturing footprint, where  
11 your put your facilities, you put your facilities in a way to  
12 minimize your costs. So in distribution trucking obviously is  
13 a significant cost. So most of the product I think that comes  
14 out of the Ogden facility is going to be destined for West  
15 Coast locations. The product manufactured in Texas, sort of  
16 the middle of the country. The product manufactured in South  
17 Carolina, the eastern side of the country.  
18 That said, each facility doesn't make 100 percent of  
19 all of the products. In some cases it is more efficient to run  
20 a product through a particular mill and not have the other  
21 mills manufacture it. So I would expect some volume of  
22 products coming out of the Ogden mill -- Ogden, Utah mill --  
23 will eventually end up on the East Coast  
24 Q. Just to clarify, the products -- of course, we are talking  
25 now about diapers and training pants -- are those

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1 Kimberly-Clark Worldwide products or are they Global Sales'  
2 products or are they entities' products?  
3 A. They are Kimberly-Clark Global Sales' products, and  
4 Kimberly-Clark Global Sales has arranged for them to be  
5 manufactured using the intellectual property that it has  
6 licensed from Kimberly-Clark Worldwide.  
7 Q. Does Kimberly-Clark Global Sales have the right to have  
8 products manufactured by others besides Kimberly-Clark  
9 entities?  
10 A. It does. We would call those certified suppliers.  
11 Q. OK. I want to go back to Kimberly-Clark Worldwide for a  
12 moment.  
13 You described the manufacturing services it provides,  
14 the toll manufacturing, and we all know that it's also an IP  
15 holding company. So those are two functions it serves.  
16 Are there any other functions that it serves in the  
17 enterprise?  
18 A. It is also the entity within Kimberly-Clark wherein a very  
19 high percentage of our foreign subsidiaries, their ultimate  
20 ownership comes through that entity. So if you looked at  
21 Worldwide and said where does Worldwide get most of its money,  
22 most of its money comes up through its foreign subsidiaries,  
23 the earnings that they make from overseas. Most of its money  
24 is from overseas.  
25 Q. Let's turn to licensing in a little bit more detail. Her

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1 Honor asked some of those questions in her note to us.  
2 Could you explain what licensing relationship exists  
3 between Worldwide and Global Sales?  
4 A. Yes. There is a license agreement that Kimberly-Clark  
5 Global Sales has entered into with Kimberly-Clark worldwide.  
6 Worldwide owns the intellectual property, has licensed it to  
7 Global Sales. In exchange, Global Sales pays it a licensing  
8 fee.  
9 Just to complete the chain, with that license and the  
10 right to have the products manufactured, Global Sales turns  
11 around and enters into agreements, gives a license to  
12 manufacturers so that they can use it, as well as have a supply  
13 agreement with them so that they can manufacture products for  
14 Kimberly-Clark Global Sales.  
15 Q. Before I forget, I want to backtrack for a second and just  
16 clarify: In terms of responsibilities, does Worldwide sell or  
17 market any products?  
18 A. No, it does not.  
19 Q. OK. So back to licensing.  
20 Are the three patents in suit the only intellectual  
21 property that Worldwide licenses to Global Sales?  
22 A. No.  
23 Q. So what has been licensed?  
24 A. Essentially all of the intellectual property that Global  
25 Sales would need to be able to have manufactured and then sell

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1 the products. So, brand names, trademarks, know-how, and then  
2 patents for products that are not in dispute, Kleenex and paper  
3 towels and tissue products and medical products. We have a  
4 medical products division as well.  
5 Q. Do you have any approximation of how many patents, for  
6 example, Worldwide has licensed to Global Sales?  
7 A. There is a very long list in the license agreement. I  
8 don't know the exact number but it numbers in the hundreds, if  
9 not more.  
10 Q. Is it possible that number is in the thousands?  
11 A. It is very possible it is in the thousands.  
12 Q. Has Kimberly-Clark Worldwide licensed the patents in suit  
13 to anyone besides Kimberly-Clark Global Sales?  
14 A. Yes, it would have had to license them to -- it would have  
15 had to, and it did, license them to Kimberly-Clark Corporation  
16 so Kimberly-Clark Corporation could manufacture diapers and  
17 training pants.  
18 It would have also manufactured -- it would have  
19 licensed those patents to foreign operations, or the foreign  
20 equivalent of those patents, where those products will be used  
21 by Kimberly-Clark's facilities overseas.  
22 Q. Has Kimberly-Clark Worldwide licensed its patents or the  
23 patents in suit to anyone who is unrelated to Kimberly-Clark, a  
24 third party?  
25 A. Yes, I am aware of at least three of those, two of which

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1 that license is to what you would call a private-label  
2 manufacturer. That is a company that would manufacture  
3 products for a store, like Wal-Mart, as private label, others,  
4 and grocery stores that have their own private label. So there  
5 is one company in Canada that has that license and uses it for  
6 sales of products in North America, and there is a company in  
7 Europe as well as Australia, the same company, that has a  
8 license to private-label products in those jurisdictions.  
9 Q. Just to be clear to make sure I understand, Kimberly-Clark  
10 Worldwide has licensed at least a couple of patents in suit to  
11 non-Kimberly-Clark entities that then manufacture and sell  
12 diapers and/or training pants into the United States?  
13 A. That's correct.  
14 Q. Could you identify those -- is the identification of those  
15 companies, is that confidential?  
16 A. We don't normally disclose that. I don't feel that is it  
17 is necessary -- I am trying to make the point that who our  
18 customers are and who has these licenses is not something that  
19 we would normally publicly disclose. We haven't done that, but  
20 if it is important here, I don't feel that it is so secret that  
21 I can't give you the names.  
22 MR. COOPERMAN: Would your Honor like to know that?  
23 THE COURT: The ultimate question is where I want to  
24 know it. I don't think I need to know it necessarily, but I  
25 don't know what your clients think. But let's move on.

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1 MR. COOPERMAN: OK.  
2 BY MR. COOPERMAN:  
3 Q. Could you tell us what products Kimberly-Clark manufactured  
4 that use our incorporated patents that are involved in this  
5 lawsuit?  
6 A. Kimberly-Clark Corporation or --  
7 Q. Thank you. At Kimberly-Clark Worldwide, what products are  
8 manufactured that are covered by the patent in suit?  
9 A. Kimberly-Clark Worldwide at their Utah facility will make  
10 diapers and training pants, and I understand that there are  
11 three patents that are in issue in this case that relate to  
12 diapers and training pants.  
13 Q. So that is Huggies and Pull-Ups, is that right?  
14 A. Yeah, those would be the brand names, correct, as well as  
15 some private label that we do ourselves.  
16 Q. Are you aware if the license agreements with these third  
17 parties -- let me back up -- are exclusive or nonexclusive?  
18 A. I know that the license agreements exist. I per se have  
19 not seen the license agreements, and I don't believe they are  
20 exclusive since Kimberly-Clark itself was using them in other  
21 jurisdictions as well. But I'm not sure how to answer that  
22 correctly.  
23 Q. You are not sure?  
24 A. I don't know.  
25 Q. What control does Kimberly-Clark Worldwide exert over

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1 influence, if you will, on all manufacturers.  
2 THE COURT: To the extent that it manufactures diapers  
3 that are sold in the United States, that's its method of  
4 exerting quality control?  
5 THE WITNESS: Yes, I agree with that.  
6 THE COURT: It controls the quality by doing it  
7 itself?  
8 THE WITNESS: It is checking its own work.  
9 THE COURT: It is a great way to protect your patent  
10 and your trademark.  
11 BY MR. COOPERMAN:  
12 Q. Does Worldwide have any say in who the executives are of  
13 Global Sales?  
14 A. No.  
15 Q. About how many employees does Kimberly-Clark Worldwide  
16 have?  
17 A. I don't know the exact number. Its employees will consist  
18 of the manufacturing employees at its three facilities as well  
19 as employees who are focused on protecting the intellectual  
20 property, like the intellectual VIP lawyers, as well as the  
21 long-range research and development people.  
22 Q. Do any --  
23 A. But probably, I'm just -- I will throw out a number that I  
24 think is roughly right but it could be off by 10/20 percent,  
25 but I think that number is between 1,000 and 1200 employees.

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1 Kimberly-Clark Global Sales in terms of its business operations  
2 or strategic goals?  
3 A. Kimberly-Clark Worldwide is a licensor, and that's  
4 really -- its level of interest in what Kimberly-Clark Global  
5 Sales does is really limited to making sure that it is  
6 protecting the intellectual property that it owns, like any  
7 licensor would, and that is primarily done through quality  
8 control. You want to make sure that the product that's being  
9 manufactured and distributed using your tradenames, trademarks,  
10 brands, and the underlying features of the patented products is  
11 being done according to specs and done appropriately. So they  
12 have rights to approve products, final products, how they come  
13 off the production line, in that sense. They don't control the  
14 management of Global Sales. They don't tell Global Sales where  
15 to sell products, that sort of control.  
16 Q. So then the control you are talking about, the products'  
17 quality control, is that sort of a trademark quality control  
18 since the Kimberly-Clark Worldwide trademarks are appearing on  
19 the Global Sales' product?  
20 A. Correct.  
21 THE COURT: It is real easy to control the quality if  
22 you are the one who is doing the manufacturing.  
23 THE WITNESS: Well, they have -- that's easier when it  
24 is Worldwide manufacturing, but there are other entities that  
25 manufacture as well. So they exert what is called a control

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1 Q. About how many employees does Global Sales have?  
2 A. I don't know that number either. It is the sales force and  
3 quite a few other operations and it's significantly more.  
4 Q. Significantly more than Worldwide?  
5 A. Mm-hmm.  
6 Q. Is that a yes?  
7 A. I'm sorry, yes.  
8 Q. How many employees -- or does Worldwide have any employees  
9 in New York?  
10 A. No.  
11 Q. Does Worldwide exert any control or any say over the  
12 operational policies or marketing of the products it  
13 manufactures for Global Sales?  
14 A. I'm sorry, could you say that again, please?  
15 Q. Sure. Does Worldwide exert any control over the  
16 operational policies or marketing of the products it  
17 manufactures for Global Sales?  
18 A. Not directly. Again, the only control they will have would  
19 be to the extent it related to the quality control and  
20 trademark protection. So for an example, if Global Sales or  
21 any -- if Global Sales wanted to use an advertising program  
22 that was damaging to the brands, they wouldn't be able to do  
23 that.  
24 Q. So, now, isn't it true that -- or does Kimberly-Clark  
25 Worldwide receive some financial benefit from Global Sales

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1 selling products into New York?

2 A. I think the answer is probably yes.

3 Q. In what way?

4 A. Two ways. To the extent that a product is manufactured by

5 Kimberly-Clark Worldwide in Utah and it finds its way into New

6 York, Worldwide is compensated for the manufacturing of that

7 product on a cost-plus basis, as I mentioned that earlier.

8 The other way it would receive compensation is the

9 license agreement that it, that Global Sales, has with

10 Kimberly-Clark Worldwide calls for Global Sales to pay a

11 licensing fee to Worldwide, and that licensing fee has varied

12 over time; it has been different at different times. In 2007,

13 and really from 2003 until 2007, it was a flat fee. So in that

14 sense there was no -- it didn't matter where the products were

15 sold, it was still going to be a flat fee.

16 We're currently working on a project where that's

17 going to be changed on a going-forward basis, starting with

18 2008. That is going to be based on a formula that's called

19 residual profits methodology, very common in the transfer

20 pricing world, pretty complicated, and we are not done with our

21 formula. We haven't figured it out completely yet.

22 Q. So at the time this lawsuit was filed, which is December of

23 2007, then there was a flat-fee royalty, is that right, that

24 Global Sales paid to Worldwide for its intellectual property?

25 A. That's correct. So regardless of the sales volume or where

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1 is a relatively small number from Worldwide's perspective.

2 Most of what Worldwide will make, or where it gets its most

3 significant source of revenue, is from dividends and profits

4 that come from the foreign subsidiaries, all of which are

5 ultimately, or most of which are ultimately owned by that

6 entity, by Worldwide.

7 Q. Do you have any sort of approximation in terms of

8 percentage of revenues that Worldwide makes from its

9 manufacturing relationship with Global Sales, approximately?

10 A. Of Worldwide's income?

11 Q. Yes, of Worldwide's income.

12 A. I don't have that exact number. I would roughly guess that

13 it is less than a quarter of its revenue, maybe even

14 significantly less than that.

15 Q. Does Global Sales license intellectual property from other

16 companies for its diapers?

17 A. I believe that it does. I believe it needs to license

18 technology from other people. Not all the technology that we

19 use is owned by Kimberly-Clark.

20 Q. What about trademarks and copyrights and things like that,

21 does it sometimes license intellectual property in designs that

22 go on diapers, for example?

23 A. Sure. A common example is licensing from a company like

24 Disney or Pixar where you would put it on your diaper or your

25 product a design to make it more enticing to the consumer to

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1 products were sold, there was still a flat fee.

2 Q. I want to go back to the financial benefit question again.

3 Would it be true that any shareholder of

4 Kimberly-Clark publicly available stock would receive some

5 financial benefit based on sales of Kimberly-Clark products

6 into New York?

7 A. Sure.

8 THE COURT: Wait. I don't have my realtime up.

9 What was that question?

10 BY MR. COOPERMAN:

11 Q. The question was: Would a shareholder of Kimberly-Clark

12 Corporation receive a financial benefit from sales of product

13 into New York by Kimberly-Clark Global Sales?

14 A. I think the answer to that would be yes. To the extent

15 that sales are made, profits are generated, a shareholder of

16 Kimberly-Clark Corporation benefits from them.

17 THE COURT: Kimberly-Clark Corporation is the public

18 company, right?

19 THE WITNESS: It is the ultimate parent entity, which

20 is a public company, correct, your Honor.

21 BY MR. COOPERMAN:

22 Q. Can you give us a sense of about how much in its annual

23 revenues Worldwide gets from its manufacturing relationship

24 with Global Sales?

25 A. I can't give you precise numbers. I can tell you that it

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1 buy.

2 Q. And would these third parties who are unrelated to K-C but

3 have this trademark licensing relationship also exert quality

4 control over the products that K-C Global Sales is selling?

5 A. Yes, global products.

6 MR. COOPERMAN: Can I have a moment, your Honor,

7 please?

8 THE COURT: Sure.

9 (Pause)

10 MR. COOPERMAN: Nothing further, your Honor.

11 THE COURT: OK. This is what I am going to do. I've

12 got some folks who actually, God bless you, want to put a

13 settlement on the record to take a case off my trial calendar.

14 I need to deal with them now. They have been here since 10

15 o'clock this morning. They actually got in through the

16 magnetometers early. I would like to deal with them now and

17 get them off.

18 Can you guys go to lunch and come back at about 10 of

19 2?

20 MR. COOPERMAN: Certainly.

21 THE COURT: Thank you very much.

22 Sorry, sir.

23 THE WITNESS: That is all right. Thank you.

24 (Luncheon recess)

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AFTERNOON SESSION

2 p.m.

THE CLERK: Hearing continuing in 07 Civil 11202.

THE COURT: OK. Mr. Wesley, would you mind resuming that seat. Thank you, sir.

THE WITNESS: Sure.

JOHN W. WESLEY,

Resumed, and testified further as follows:

THE COURT: All right. Do we have some cross-examination here?

MR. SIFF: Yes, your Honor.

Your Honor, if I could approach the witness now just to provide him with just some things that I might be asking him about?

THE COURT: Sure.

MR. SIFF: Thank you.

CROSS-EXAMINATION

BY MR. SIFF:

Q. Good afternoon, Mr. Wesley. How are you?

A. I'm fine. Thank you.

Q. Good. I've put in front of you a couple of bags there. Do you recognize those bags?

A. Sure.

Q. And those would be?

A. There is a package of Huggies Pull-Ups and a package of

and that goodwill also goes to increasing the value of the

trademark, Huggies, is that correct?

A. I'm not a valuation expert. I would assume that that is the answer but that is beyond my personal knowledge.

Q. Do you know what the value of the Huggies' mark is?

A. It's considerable, billions of dollars.

Q. Billions of dollars.

And part of that billions of dollars is due to sales of the Huggies brand diapers and training pants in New York?

A. I would assume that to be the case, yes.

Q. And in the end is it important to Kimberly-Clark Worldwide that these products are sold in New York?

A. Kimberly-Clark Worldwide, as the owner of the intellectual property, has licensed it. So, yes, as a licensor of intellectual property, it would hope that that product is sold everywhere.

Q. Everywhere, and New York included, correct?

A. New York included.

Q. And it is important to Kimberly-Clark Worldwide that those products are sold in New York, correct?

A. I don't parse words with you. It is important for Kimberly-Clark and the products we sold. If the products are sold outside of New York, that's fine. I have got no --

THE COURT: In other words, as far as Worldwide is concerned, the more places it sold, the better?

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Huggies Supreme Natural Fit Diapers.

Q. Do both of those bags have on them the famous Huggies trademark?

A. Yes.

Q. And are those diapers and training pants sold in New York?

A. I would assume that they are, yes.

Q. And with respect to the trademarks, is there goodwill associated with the sale of those brands of diapers and training pants?

A. There is goodwill associated with trademarks.

Q. And that goodwill reverts back to the owner of the trademarks, is that correct?

A. That is correct.

Q. And Kimberly-Clark Worldwide is the owner of the trademarks?

A. That is correct.

Q. And, therefore, Kimberly-Clark Worldwide, as owner of the trademarks, reaps the benefits of the sale of those products in New York?

A. In what way?

Q. Well, you mentioned that there was goodwill associated with the sale of those products that have that trademark on them, is that correct?

A. That's correct.

Q. And that goodwill reverts back to Kimberly-Clark Worldwide,

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THE WITNESS: Without a question.

Then we would like --

THE COURT: Anywhere and everywhere would be fine?

THE WITNESS: And Worldwide would definitely like to see its products sold in New York and every other state and in every other country.

BY MR. SIFF:

Q. Is there copyrightable material on those bags that helps sell those products?

A. Copyrightable, yes.

Q. Are there pictures on there and graphics and artwork and things of that nature?

A. There certainly is.

Q. Do you know who the owner of that copyrightable material is?

A. Some of it I'm assuming is off -- well, again, I'm not an expert, I don't know everything that's on here.

There are certainly marks from Disney. Disney obviously is going to have its own rights on those. We would have licensed those from Disney. But the other materials are going to be owned by Kimberly-Clark Worldwide.

Q. I think if you turn the package to at least one side of there, I believe it will tell you that Kimberly-Clark Worldwide owns copyrights regarding what is shown on the packaging; is that correct?

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1 I believe it is on one of the shorter sides, as  
2 opposed to the bases. The pink box, it would be on the bottom.  
3 Is it in there?  
4 (Pause)  
5 It is in small print.  
6 THE COURT: Why don't you show him what you are  
7 talking about.  
8 THE WITNESS: I have the location. I am just trying  
9 to read it.  
10 A. The package will show that there is copyrights, a C in a  
11 circle, the copyright symbol, and that it is owned by  
12 Kimberly-Clark Worldwide or "KCWW," as it says here.  
13 Q. Thank you. And just so the record is clear, that would be  
14 the same for the other bag, which is the diapers?  
15 A. I see it says, "Distributed by Global Sales."  
16 (Pause)  
17 MR. SIFF: Your Honor, if it would help --  
18 A. The same mark, Kimberly-Clark Worldwide, KCWW.  
19 Right below it is the mark for Disney, showing that  
20 they have a copyright in the name of Winnie The Pooh.  
21 Q. Other than that, the copyrights are for Kimberly-Clark  
22 Worldwide, correct?  
23 A. That's what it says.  
24 Q. And those copyrights or that copyrightable material helps  
25 sell those products, correct?

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1 A. That is correct.  
2 Q. Next to you I have also placed a copy of each of the  
3 patents in suit in this case?  
4 MR. SIFF: Your Honor, if it would help, I could read  
5 those numbers into the record or if it is necessary I will just  
6 move on.  
7 THE COURT: It is not necessary.  
8 BY MR. SIFF:  
9 Q. Are you familiar with those patents?  
10 A. No, I'm not. I'm not personally familiar with the patents.  
11 I never read the patents before. I've never seen the patents  
12 before.  
13 Q. Are you aware of whether or not let's start with diapers  
14 are covered by any or all of those patents?  
15 A. I have been told that they do.  
16 Q. I'm sorry?  
17 A. I have been told that the patents, these patents, which you  
18 are representing that these patents are the patents that are at  
19 issue --  
20 Q. Yes.  
21 A. -- and I have been told, in getting ready for this  
22 discussion today, that these patents at issue go to the  
23 processes and features of diapers and training pants.  
24 Q. And just so it's clear, when you refer to "those patents,"  
25 you are referring to all three of those patents that are in

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1 this lawsuit?  
2 A. Again, my discussions have not -- well, it didn't say -- I  
3 don't know, for example, that all three patents apply to both  
4 products.  
5 THE COURT: I don't think it is disputed.  
6 THE WITNESS: I believe that the three patents --  
7 THE COURT: Is it disputed?  
8 MR. COOPERMAN: There is no dispute about that, your  
9 Honor.  
10 THE WITNESS: I just don't know.  
11 THE COURT: You don't know but the lawyer knows them.  
12 MR. SIFF: The same would be true -- I would assume,  
13 your Honor, there is no dispute that those patents cover the  
14 training pants, as well. I don't mean to parse training pants  
15 and diapers. I just want to make sure that that is correct.  
16 MR. COOPERMAN: I have been advised that it is our  
17 position not all three cover but at least some of them do.  
18 THE COURT: Fine. Is there any dispute that the four  
19 E patents cover processes or features that are incorporated  
20 into Huggies' products, either diapers or training pants or  
21 both.  
22 MR. COOPERMAN: There is no dispute about that, your  
23 Honor.  
24 THE COURT: Fine. I didn't think so.  
25 BY MR. SIFF:

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1 Q. Mr. Wesley, when the patented products, training pants and  
2 diapers, are sold in New York, is Kimberly-Clark Worldwide  
3 exploiting its patents?  
4 A. I don't know how to answer that question. I could tell you  
5 how it works. Whether it is exploiting or not exploiting, I  
6 don't know what that word means.  
7 Q. Well, do the sale of training pants and diapers put  
8 Worldwide in a position to ask for royalties for those patents?  
9 A. Yes, and it does -- and it gets royalties.  
10 Q. So in fact --  
11 A. It gets a licensing fee.  
12 Q. And in fact it gets a licensing fee.  
13 And who does that licensing fee come from?  
14 A. Kimberly-Clark Global sales.  
15 Q. So the sales of the diapers then, at least in the context  
16 of the question I asked, the sale of the diapers and training  
17 pants does exploit the patents in the sense that Kimberly-Clark  
18 Worldwide does receive money for those patents?  
19 A. Kimberly-Clark Worldwide receives a licensing fee from  
20 Global Sales. Now, I'm not trying to parse words. I don't  
21 know what the word "exploit" means. I have no idea of whether  
22 the word exploit has legal significance at all.  
23 THE COURT: It is OK. I understand your answer.  
24 Your answer is that Worldwide licenses the patents, it  
25 gets a fee for that, and until now or recently, a flat fee, not

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1 contingent on the amount of sales.  
 2 THE WITNESS: Correct.  
 3 THE COURT: But that is about to change?  
 4 THE WITNESS: Right.  
 5 THE COURT: If you guys can work out the formula.  
 6 THE WITNESS: Correct.  
 7 THE COURT: OK.  
 8 BY MR. SIFF:  
 9 Q. Are there other products that Kimberly-Clark Global Sales  
 10 sells in New York on behalf of Kimberly-Clark Worldwide?  
 11 A. I assume the answer is yes. Well, let me back up a second.  
 12 It doesn't sell on behalf of K-C Worldwide. It sells  
 13 on behalf of itself. It is the entity, the sale, the  
 14 customer-facing entity that actually sells our products.  
 15 Now, there are other products that Kimberly-Clark  
 16 Global Sales will sell in New York that use intellectual  
 17 property that is obtained from K-C Worldwide.  
 18 Q. What products are those?  
 19 A. Kimberly-Clark Worldwide owns all of the products, all of  
 20 the intellectual property for all of Kimberly-Clark's various  
 21 products and Global Sales sells all of those products. So it  
 22 is tissue, like Kleenex. It's toilet paper. It's paper  
 23 toweling. It's medical products.  
 24 Q. And with respect to -- and the paper towels are Scott  
 25 towels?

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1 A. Scott?  
 2 Q. Yes.  
 3 A. Primarily Scott.  
 4 Q. So with respect to Kleenex and Scott towels, is there  
 5 goodwill associated with the sale of those products?  
 6 A. Again, I'm not trying to parse words with you. I know  
 7 enough to know that goodwill is a legal concept, and I don't  
 8 know what it means beyond that. So you are asking me to  
 9 confirm for you that a legal issue, goodwill, is attached to  
 10 any of these sales. I just don't know that.  
 11 I can make some assumptions, as anybody would.  
 12 THE COURT: You don't have to make any assumptions.  
 13 If any assumptions have to be made, I will make the  
 14 assumptions.  
 15 Q. Let me put it to you simple: Does the sale of Kleenex and  
 16 Scott towels increase the value of those trademarks?  
 17 A. I'm not going to assume. With the judge's instruction, I  
 18 don't know how the valuation of a trademark works so...  
 19 Q. Do you have any idea of how much the Kleenex, the value of  
 20 the Kleenex mark is?  
 21 A. It is also a billion-dollar brand.  
 22 Q. How about the Scott trademark?  
 23 A. It is a billion-dollar brand. That means a billion dollars  
 24 of sales. The brands are worth certainly more than that.  
 25 Q. Does Global Sales sell those products in New York?

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1 A. Yes, it does.  
 2 Q. Who is the owner of those trademarks, Kleenex and Scott  
 3 towels?  
 4 A. Kimberly-Clark Worldwide.  
 5 Q. If Global Sales did not exist, would Worldwide --  
 6 Kimberly-Clark Worldwide stop selling diapers in New York?  
 7 A. No -- I'm sorry, say that again.  
 8 Q. Sure. If Kimberly-Clark Global Sales did not exist, would  
 9 Kimberly-Clark Worldwide stop selling diapers in New York?  
 10 A. Well, it doesn't sell diapers in New York. So I'll say  
 11 definitely if Kimberly-Clark Global Sales were to go away,  
 12 would there be some other entity out there that might sell the  
 13 products? The answer to that would be yes. Could it be  
 14 Worldwide? Yeah, it could be Worldwide. Could it be another  
 15 Kimberly-Clark entity? Yeah, it could. We chose to structure  
 16 it differently.  
 17 THE COURT: I think his question probably is a little  
 18 bit different.  
 19 Would Worldwide stop dealing in diapers and  
 20 diaper-related trademarks and patents if Global Sales were to  
 21 disappear? Would we no longer see Huggies in the world if  
 22 Global Sales were to disappear?  
 23 THE WITNESS: No. Obviously, the answer is that we  
 24 would find a way to sell the product. Kimberly-Clark  
 25 Corporation or the enterprise would find a way to sell the

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1 product if this legal entity didn't exist.  
 2 MR. SIFF: Thank you.  
 3 BY MR. SIFF:  
 4 Q. Under the license agreement, does Kimberly-Clark Global  
 5 Sales have the right to enforce Kimberly-Clark Worldwide's  
 6 patents?  
 7 A. Yes, it does. The right would go first to K-C Worldwide,  
 8 and if K-C Worldwide chose not to enforce the right, then K-C  
 9 Global Sales would have that right.  
 10 Q. Is there a situation where Worldwide and Global Sales would  
 11 sue together, meaning bring the suit together?  
 12 THE COURT: If you lift up that microphone just a  
 13 little bit. I think it is at an angle for you, for a slightly  
 14 shorter person.  
 15 A. I think the answer to that is yes. I understand there is a  
 16 proceeding in Texas where both parties are the plaintiff.  
 17 Q. Is Kimberly-Clark Global Sales licensed to do business in  
 18 New York?  
 19 A. Yes, Kimberly-Clark Global Sales is the entity that does  
 20 business in New York.  
 21 MR. SIFF: No further questions, your Honor.  
 22 MR. COOPERMAN: Your Honor, may I do just a brief  
 23 redirect, please?  
 24 THE COURT: Absolutely.  
 25 MR. COOPERMAN: Thank you.

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1 REDIRECT EXAMINATION  
2 BY MR. COOPERMAN:  
3 Q. Just a few questions, Mr. Wesley.  
4 I believe at some point, under questioning by  
5 Mr. Siff, you testified that Worldwide would like to see its  
6 products sold everywhere. I just want to go back and clarify.  
7 What products does Worldwide have, Worldwide have, if  
8 any?  
9 A. Worldwide doesn't have products; Worldwide has intellectual  
10 property. So we would like -- Worldwide would like to see  
11 products sold by somebody that bears its intellectual property.  
12 Q. You also said that K-C Corp. would find a way to sell  
13 products if K-C World sales didn't exist. I think you said  
14 something like that. Does that sound right?  
15 A. That is correct, yes.  
16 Q. Is K-C Worldwide situated to sell and market products at  
17 this point?  
18 A. No, it has no sales force. It has no connections to the  
19 customers.  
20 Q. So it couldn't just immediately take up the slack?  
21 A. No, it could not.  
22 Q. I believe you also testified that K-C Global Sales could  
23 sue under the patent if K-C Worldwide didn't sue.  
24 Are you sure that you don't need to have the patent  
25 owner involved in the lawsuit in order to bring suit under a

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1 patent?  
2 A. I have not gone back to read the license agreement, but my  
3 recollection was that it had the ability for the patent owner  
4 to bring claims, and if the patent owner chose not to, then the  
5 licensee could step in and defend the action or to assert an  
6 infringement action.  
7 Again, I did not go back to reread that before I came  
8 here today.  
9 Q. OK. So you're not positive about the terms of the  
10 agreement?  
11 A. That is correct.  
12 Q. Or how the law works with regard to requiring patent owners  
13 to be parties to a lawsuit?  
14 A. I would have no idea of what the law says in this area.  
15 Q. And then just to wrap up, could you give us a summary of  
16 how the K-C Global Sales, K-C Worldwide and K-C Corporation  
17 structure exists? Could you give us a sense for what each is  
18 responsible for doing in the conglomerate?  
19 A. Yes, I could try.  
20 Just the ownership structure starts with  
21 Kimberly-Clark Corporation as the ultimate parent entity. It  
22 has two subsidiaries -- it actually has hundreds, but the two  
23 that are relevant for this are Kimberly-Clark Worldwide and  
24 Kimberly-Clark Global Sales, and Global Sales is the entity  
25 that has been structured and set up so that it is the entity

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1 that makes all of the sales of products in the U.S. So every  
2 product that Kimberly-Clark sells in the U.S. is sold by K-C  
3 Global Sales. That is what it says on these packages as well,  
4 that they are distributed by them.  
5 Q. Does K-C Corp. do any sales?  
6 A. It does not.  
7 So K-C Worldwide has the three manufacturing  
8 facilities that I testified to before and K-C Corporation has  
9 17 or so manufacturing facilities, and those manufacturing  
10 facilities all manufacture product on behalf of -- at the  
11 request of Global Sales so that Global Sales can sell that  
12 product in the marketplace.  
13 Q. And do these entities give each other instructions as far  
14 as how to run their operations? Does KCC, for example,  
15 instruct K-C Global Sales as to how to run its operations, or  
16 is it independently run?  
17 A. It is -- then there is coordination, as you would expect,  
18 between manufacturers, sellers. Who gives instructions, I'm  
19 not sure how to answer that. But there certainly is -- it is a  
20 well-oiled machine. It is a very coordinated process.  
21 Q. Does K-C Worldwide, for example, give direction to K-C  
22 Global Sales as to its business strategies or the markets it  
23 should be seeking or the customers it should be selling to?  
24 A. No, it does not direct the sales force or the marketing  
25 efforts. That's done by Kimberly-Clark Global Sales.

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1 Q. Are there separate boards for each of these corporations?  
2 A. Each is a separate legal entity. Each has a board of  
3 directors and officers, as required by law.  
4 MR. COOPERMAN: I have nothing else, your Honor.  
5 (Pause)  
6 THE COURT: OK. Thank you so much, Mr. Wesley.  
7 THE WITNESS: Thank you.  
8 (Witness excused)  
9 THE COURT: You've brought another witness also?  
10 MR. COOPERMAN: Yes, we have. Ms. Margolis is here.  
11 I --  
12 THE COURT: You may have covered everything with  
13 Ms. Margolis, but your client actually may have some questions  
14 about the licensing and such that Mr. Wesley wasn't able to  
15 answer. I'm glad to hear from Ms. Margolis.  
16 MR. COOPERMAN: Could we have one minute to decide  
17 whether we need to put Ms. Margolis on?  
18 THE COURT: Sure.  
19 MR. COOPERMAN: Thank you very much.  
20 (Pause)  
21 MR. COOPERMAN: We have no direct for Ms. Margolis.  
22 THE COURT: Do you have any cross for Ms. Margolis?  
23 MR. SIFF: No, your Honor, we are fine. Thank you,  
24 your Honor.  
25 THE COURT: Well, too bad, Ms. Margolis, nobody wants

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1 to talk to you.

2 MS. MARGOLIS: I'm sure there will be other  
3 opportunities, your Honor.

4 THE COURT: OK. So that does flesh out the record in  
5 an appreciable way, and I thank you, both of you, for coming  
6 today on short notice. I genuinely appreciate it.

7 And the whole thing is kind of an intriguing  
8 proposition. So what I would suggest is that now that we've  
9 gotten the relevant facts on the table, that, you know, each of  
10 you take ten days to put in your view on how it does or does  
11 not support the exercise of the personal jurisdiction over  
12 Worldwide, and that will resolve that question. And if I think  
13 I have jurisdiction, I am going to keep the case, and if I  
14 don't think I have jurisdiction, it is going to Texas.

15 That's the easy answer. OK? All right?

16 MR. SIFF: Very good, your Honor.

17 THE COURT: Very interesting. Very interesting.

18 Thank you.

19 ALL COUNSEL: Thank you, your Honor.

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